

EVERYBODY LOVES TREES : POLICING AMERICAN CITIES THROUGH STREET TREES

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ABSTRACT

Recently, municipalities have been investing large sums of money, as well as much bureaucratic and professional effort, into making their cities not only more “treefull” places, but also places that survey, measure, regulate, and manage their trees. This article explores the transformation of the utilitarian discourse on trees, which focuses on the benefits of trees and greenery, into a normative discourse whereby trees are not only considered good but are also represented as if they are, or should be, loved by everybody. This transformation is not only the result of top-down governmental policies. It is also a consequence of longstanding romantic views of nature in the city—especially in the American city—facilitated by environmental organizations, local communities, and individual activists. Importantly, the attribution of morality to tree practices masks the clandestine project of governing the urban population, and the governmental control of urban crime in particular.

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*“The street is disorder This disorder is alive. It informs. It surprises.”*¹

I. INTRODUCTION

“Greening the city” is currently a hot issue in the agenda of major cities worldwide. Trees are a significant aspect of this issue. Recently, municipalities have invested large sums of money, as well as much bureaucratic and professional effort, into making their cities not only more “treefull” places, but also places that survey, measure, regulate, and manage their trees. City arborists and foresters provide a long list of ecological reasons to explain why trees are absolutely and impeccably good. However, the ecological benefits of trees are not what this article is about. Rather, it explores the transformation of the utilitarian discourse on trees, which focuses on the benefits of trees and greenery, into a normative discourse whereby trees are not only considered good, but are also represented as loved by everybody. This transformation is not only the result of top-down governmental policies, but it is also a consequence of longstanding romanticist views of nature in the city, furthered by environmental organizations, local communities, and individual activists. Importantly, this normative admiration of trees serves also as a disciplinary means for governing urban society, and criminal conduct in particular.

The urban street is a unique space. It embodies the inner/outer divide so typical of modern life,² as well as the libertarian divide between public and private. Specifically, this article examines the management of trees that are situated on city streets, commonly referred to as “public trees,”³ or as “public shade trees.”⁴ Since public trees are also located in parks, cemeteries, gardens, and forests—none of which are the focus of this article—I prefer to use the term “street trees” here. Through focusing on the street tree, this article examines the materialization of the public/private divide—sketching a picture

1. HENRI LEFEBVRE, *THE URBAN REVOLUTION 18–19* (Roberto Bononno trans., Univ. of Minn. Press 2003) (1970).

2. See RICHARD SENNETT, *THE USES OF DISORDER: PERSONAL IDENTITY AND CITY LIFE* (1970).

3. See, e.g., VANCOUVER, CAN., *STREET TREE GUIDELINES* (1996) (on file with author); see also TORONTO, CAN., *MUN. CODE § 813-3* (2008), available at http://www.toronto.ca/legdocs/municode/1184_813.pdf (defining public trees as “shade or ornamental trees”).

4. MASS. GEN. LAWS ch. 87, § 1 (2008).

of the production and management of the urban street through its trees, and noting the increased use of street trees for policing.

This article attempts to uncover the cultural and historical foundations that rest at the core of the American “love of trees” movement, and to then tie this movement to the recent increase in indirect spatial policing of city residents. It explores the properties of trees both from a property perspective and from the perspectives of class, race, and status. I suggest that the deeply rooted historical correlation between trees and status is the basis for the extremely useful role that trees perform in new modalities of governance. The “love of trees” narrative activates and unites subjects, thus forming a collective identity that undermines any other relationship to trees by defining such a relationship as uncivilized, and at times even criminal. A rivalry between criminals and trees is thereby established and then transformed into a detailed program of action. Indeed, recent city projects attempt to produce a sense of security and stability by utilizing what they portray as the trees’ tranquilizing effects. Arguments between city officials on whether trees support or interfere with the urban residents’ sense of safety reveal the underlying common assertion that trees are nonhuman policemen in the war over crime. Such arguments convey that public city space is a manipulated material construct intended to orient city dwellers into making “proper” choices. In this sense, the management of city trees is yet another technology in a growing list of tools used by city officials in this everyday governing of crime in the city.⁵

This article is a work of legal ethnography.⁶ It relies on twenty-five in-depth, semi-structured interviews conducted in four North American cities: Toronto, Vancouver, Boston, and Brookline, along with several participatory observations and a range of governmental and nongovernmental documents, reports, and case studies.

5. See generally Jonathan Simon, *Megan’s Law: Crime and Democracy in Late Modern America*, 25 LAW & SOC. INQUIRY 1111, 1111–51 (2000); David Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society*, 36 BRIT. J. CRIMINOLOGY 445, 445–71 (1996).

6. See generally Eve Darian-Smith, *Ethnographies of Law*, in THE BLACKWELL COMPANION TO LAW AND SOCIETY 545 (Austin Sarat ed., 2004); see also Rebecca French, *Law and Anthropology*, in A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 397 (Dennis Patterson ed., 2003).

II. “TREES ARE GO(O)D”

“The green city is an ideal of universal appeal that transcends temporal, spatial and cultural divides,” declare certain environmentalists.⁷ Others add that “[a] city with high-quality and generous green spaces epitomizes good planning and management, a healthy environment for humans . . . and bestows pride on its citizenry and government.”⁸ Indeed, numerous projects conducted in postindustrial urban spaces are dedicated to increasing the benefits of urban greenery, and of trees in particular. The existing literature on the subject broadly groups these benefits into environmental, economic, and social categories.⁹ Environmental benefits include mitigation of extremes in microclimates, such as the urban heat island effect.¹⁰ In addition, trees’ roots can capture storm runoff associated with urbanization processes and released long after the event.¹¹ Also, the urban forest can act as a habitat for endangered species.¹² Finally, it has also been argued from an economic perspective that strategically planted trees can reduce energy costs for residents by providing wind and sun barriers.¹³ It is estimated, for example, that planting “100 million trees in residential locations in the [United States] could save around 2 billion dollars in energy cost every year.”¹⁴ The literature that praises the benefits of greening the city at the same time stresses that the presence of trees has sociopsychological impacts on urban dwellers and that trees provide a contrast to the harshness of the extensively built environment, thereby mitigating the effects of urban fatigue.¹⁵ Accordingly, urban trees are presented as positively affecting emotional health, enhancing job satisfaction, and increasing the overall quality of life in the city, as well as supporting the emotional attachment of residents to their neighborhoods. Here

7. C.Y. Jim, *Green-space Preservation and Allocation for Sustainable Greening of Compact Cities*, 21 *CITIES* 311, 311 (2004).

8. *Id.*

9. See Harold A. Perkins et al., *Inequitable Access to Urban Reforestation: The Impact of Urban Political Economy on Housing Tenure and Urban Forests*, 21 *CITIES* 291, 292 (2004).

10. See, e.g., A.W. MEEROW & R.J. BLACK, UNIV. OF FLA., CIRCULAR NO. EES-43, *ENVIROSCAPING TO CONSERVE ENERGY: A GUIDE TO MICROCLIMATE MODIFICATION* 4-5 (2003), available at <http://edis.ifas.ufl.edu/pdf/FILES/EH/EH14300.pdf>.

11. See Perkins et al., *supra* note 9, at 292.

12. *Id.*

13. MEEROW & BLACK, *supra* note 10, at 1.

14. Perkins et al., *supra* note 9, at 292.

15. *Id.*

is one possible summary of the benefits and costs of trees in the urban environment:

Well-managed urban forests can reduce demands for natural resources by producing food and conserving energy, water and carbon dioxide. Also, they can mitigate the impact of urban development by moderating urban climate, improving air quality, controlling rainfall runoff and flooding, lowering noise levels, harboring wildlife, reducing human stress levels, and enhancing the attractiveness of cities. However, these benefits can be partially offset by problems such as pollen production, hydrocarbon emissions, green waste disposal, water consumption, and displacement of native species by aggressive exotics.¹⁶

Urban forestry professionals occupy an increasingly prominent position in many city governments in North America. Their profession relies, for the most part, on a basic assumption that trees are intrinsically good for the city.¹⁷ Consequently, many North American cities have recently initiated tree projects, highlighting their image as green cities. This, for example, is how New York City's official website describes the City's relationship to its trees:

Ten years ago, Parks & Recreation embarked on a near impossible task—counting every single tree growing along New York City's streets. We succeeded, and this comprehensive survey of 498,470 trees provided Parks with invaluable information about our urban forest—including its species, size, condition, and distribution across the landscape. It helps us with the work we do every day.¹⁸

While New York City focuses its efforts on extensive surveys, Chicago focuses on tree planting missions.

In 2008, the Bureau of Forestry will plant 6,000 trees throughout the City of Chicago. The benefits of trees are numerous and are increasingly important to the achievement of Mayor Daley's objective of a cleaner, greener environment. For more than 160 years, *Urbs in Horto* (“City in a Garden”) has been Chicago's motto. The Bureau of Forestry is working diligently to make

16. E. G. McPherson, *Accounting for Benefits and Costs of Urban Greenspace*, 22 LANDSCAPE & URB. PLAN. 41, 42 (1992) (citations omitted).

17. See generally Perkins et al., *supra* note 9; Rachel Kaplan & Janet Frey Talbot, *Ethnicity and Preference for Natural Settings: A Review and Recent Findings*, 15 LANDSCAPE & URB. PLAN. 107, 107–17 (1988).

18. Stacy Kennedy & Doreen Whitley, *Street Tree Census: Volunteers Count!*, DAILY PLANT (N.Y. City Dep't of Parks & Recreation, New York, N.Y.), May 9, 2006, available at http://www.nycgovparks.org/sub_newsroom/daily_plants/daily_plant_main.php?id=19848.

Chicago's garden a better and more beautiful place for our residents, their children and their children's children.¹⁹

Under a section titled "Urban Forestry," the City of Boston's official website states that "[t]he urban forest plays an important role in Boston's landscape," adding that "[w]e plant public shade trees throughout Boston's 22 neighborhoods. Each street tree signifies the Mayor's commitment to a greener Boston."²⁰ Similarly, the City of Toronto's official website indicates that "Toronto is a city of trees. More than three million trees dominate our ravines, line our boulevards and beautify our parks. Millions more trees are located on private property. Trees are the lifelines of our city."²¹

Another Canadian city, Vancouver, also boasts about its tree population, stating that

[t]he Vancouver Park Board, through its arboriculture program, is committed to the growth, diversification and enhancement of our street tree population and to the continued health, protection, promotion and management of our urban forest. The Vancouver Park Board looks after 130,000 trees, which decorate the city's myriad streets. This urban forest is comprised of nearly 600 different kinds of trees.²²

The centrality of trees in the construction of a city's self-image is not only a North American phenomenon, but also a dominant feature of many cities worldwide. For example, the City of London states that it is "firmly committed to maintaining and enhancing London's trees and woodlands as a vital part of the environment of Greater London," reasoning that "[t]rees and woodlands are an essential part of London's character and identity. They help to breathe life into the capital Trees and woodlands are good for Londoners, good for visitors to London, and good for business in London."²³ Similarly, Singapore prides itself on being a thriving tropical "garden city" with "luxuriant greenery," and states as its mission: "Let's Make Singapore

19. CityofChicago.org, Streets & Sanitation, Tree Planting, <http://egov.cityofchicago.org/> (click "Your Government," "City Departments," then "Streets and Sanitation," then "Services & Programs," and then "Tree Planting") (last visited Dec. 15, 2008).

20. City of Boston.gov, Urban Forestry, <http://www.cityofboston.gov/parks/streettrees/> (last visited Dec. 15, 2008).

21. City of Toronto, What is the 'Urban Forest'?, http://www.toronto.ca/trees/what_is_urban_forest.htm (last visited Dec. 15, 2008).

22. Vancouver Park Board, Street Trees, Street Trees Management Program, <http://ns.vancouver.ca/parks/trees/aboutstreettrees.htm> (last visited Dec. 15, 2008).

23. MAYOR OF LONDON, CONNECTING LONDONERS WITH TREES AND WOODLANDS: A TREE AND WOODLAND FRAMEWORK FOR LONDON 1 (2005), available at http://www.london.gov.uk/mayor/environment/forest/docs/ltwf_full.pdf.

Our Garden.”²⁴ Likewise, “[t]he City of Melbourne protects, cares for and nurtures trees in its streets and parkland to ensure [that] they continue to thrive as one of the city’s most important features.”²⁵ In 1996, Tokyo designated the Ginkgo tree as its “official metropolitan tree,” explaining that “[t]he symbol of the metropolis is made up of three arcs resembling a ginkgo leaf to represent the letter T for Tokyo. The metropolitan logo is normally rendered in a vivid green color to symbolize Tokyo’s future growth, charm, and tranquility.”²⁶ Finally, the official website of Saudi Arabia’s capital, Riyadh, mentions that “[s]ome of the date palm groves . . . for which Riyadh was historically famous have been preserved. The city is still known for its vast green spaces, though today they are primarily comprised of modern parks.”²⁷

The assumption that green is good and healthy has increasingly become central to the construction of the modern, civilized city. Furthermore, greening the city has become “big business.” “World cities” deploy complex geographic information system (GIS) techniques and maintenance methods to survey, monitor, and manage public trees. These techniques and methods enable cities not only to compare and compete over the numbers of trees they have, but also to boast over the biodiversity of their “tree community,” the uniqueness of their specific trees, and the interactive techniques deployed for tree governance. Private companies, non-profit organizations, and local communities alike have been taking on “tree care” projects, registering the numerous trees located in the city, and collecting each tree’s history into a central database, which is then made available to the general public. These detailed inscription devices record the tree’s material conditions, thereby enabling its stabilization, while at the same time making it comparable to other objects.²⁸

24. National Parks Singapore, Our Garden City, http://www.nparks.gov.sg/cms/index.php?option=com_content&view=article&id=78&Itemid=66#1 (last visited Dec. 15, 2008).

25. City of Melbourne, Trees and wildlife—Introduction, <http://www.melbourne.vic.gov.au/info.cfm?top=26&pg=600> (last visited Dec. 15, 2008).

26. Tokyo Metropolitan Government, Appendices, Tokyo’s Symbols, <http://www.metro.tokyo.jp/ENGLISH/PROFILE/appendix04.htm> (last visited Dec. 15, 2008).

27. Royal Embassy of Saudi Arabia, *Riyadh Maintains Its Heritage While Managing Growth*, SAUDI ARABIA, Winter 1997, at 2, available at <http://www.saudiembassy.net/Publications/MagWinter97/riyadh-growth.htm>.

28. See also Nikolas Rose & Peter Miller, *Political Power Beyond the State: Problematics of Government*, 43 BRIT. J. SOC. 173, 187 (1992).

Alongside the ecological and technological development of urban trees, there are also legal properties of this enterprise. Indeed, the legal and regulatory codes of many cities contain various clauses and procedures for the protection of trees. For example, section 813-10 of the Toronto Municipal Code states that “[n]o person shall, within the City’s boundaries, injure or destroy any tree having a diameter of 30 centimetres or more measured at 1.4 metres above ground level unless authorized by permit to do so.”²⁹ In addition, Boston’s municipal government maintains a distinct Urban Forestry department that holds regular Tree Hearings³⁰ and that has recently begun a Memorial Tree Program.³¹

This extensive tree culture is not present in every city. For example, I could not trace similar tree projects in Delhi, Istanbul, Nairobi, or Baghdad. Although this is not the place for a more in-depth comparison of this sort, there is a sense that the green city has increasingly become a significant icon in certain cities, and in Western cities (or cities aspiring to be Western) in particular. While it is possibly true that the various ecological benefits of trees can provide a basic explanation for certain aspects of the urban emphasis on tree management,³² these benefits can hardly account for what is increasingly becoming a tree fetish—an obsession with city trees. This is neither the place to take a stand on the numerous environmental and economic debates over the degree to which urban trees benefit urban residents, nor do I offer here an assertion as to whether trees are “good” or “bad.” What I do attempt, however, is to demonstrate the instrumental use that certain groups make of these benefits under a façade of universal egalitarianism. What this article claims, in other words, is that even if trees are good for the environment, an assumption that is in itself contested by some environmentalists, they are not necessarily good for all people, and—although this might come as a surprise to some—not everybody loves trees. Further, this article explores why the tree is such a focal concern for city government and what techniques of governance are utilized to secure its position as such.

29. TORONTO, CAN., MUN. CODE § 813-10, *amended by* By-law No. 118-2008 (2008).

30. City of Boston.gov, Tree Hearings, http://www.cityofboston.gov/parks/streettrees/hearing_notice.asp (last visited Dec. 15, 2008).

31. City of Boston.gov, Tree and Bench Donation Program, http://www.cityofboston.gov/parks/streettrees/memorial_tree.asp (last visited Dec. 15, 2008).

32. *C.f.* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961) (ridiculing the approach that sees trees as the lungs of the city, depicting it as “nonsense”).

III. “EVERYBODY LOVES TREES”

A. City Trees in a Temporal Setting

Most of the subjects interviewed as part of this study suggest that “love” is the universal human emotion toward trees. “Everybody loves trees,” declares Ian Buchanan, Natural Resources Manager for the York region of Toronto.³³ This section unpacks this exclamation, exploring who are the “everybodies” (and the “nobodies”) that are included (and excluded) from this statement.

As features of public space, tree planting and management are hardly new phenomena. Over four thousand years ago, early Egyptians described trees transplanted with balls of soil, and in thirteenth-century China, Kublai Khan initiated tree planting along all the roads in and around Beijing. However, trees were apparently a rare feature in ancient cities, except in the gardens of rulers and on temple grounds.³⁴ Medieval European cities contained some trees in the private gardens of the ruling class, but they were mostly fruit, rather than ornamental, trees. The sixteenth-century Italian Renaissance saw the first development of villas in the periphery of cities. These villas had walled gardens and tree-lined paths intended for walking, called *allees*.³⁵

In the seventeenth century, the upper classes in Western Europe began to develop tree *allees* for recreational activities such as bowling and archery. *Allees* for pedestrian and vehicular traffic were also planted with trees, and so were French fortifications.³⁶ The first planting of trees in Paris was on the bulwark, what later became known as the Grand Boulevard.³⁷ In the Netherlands, *allees* of trees were planted along canals, and the plan for Amsterdam’s expansion called for one tree per building.³⁸ In London, trees were planted in enclosed squares for the exclusive use of nearby residents. However, even toward the end of the seventeenth century, trees were still uncommon in European cities, and were mostly available only to the

33. Interview with Ian Buchanan, Manager of Natural Res. & Forestry Servs., York Region, in Toronto, Can. (Aug. 8, 2005).

34. See ROBERT W. MILLER, *URBAN FORESTRY: PLANNING AND MANAGING URBAN GREENSPACES* 39 (1988).

35. See H.W. Lawrence, *The Neoclassical Origins of Modern Urban Forests*, 37 *FOREST & CONSERVATION HIST.* 26, 28 (1993).

36. *Id.*

37. See MILLER, *supra* note 34.

38. See Lawrence, *supra* note 35.

upper classes.³⁹ The rise of professional and merchant classes in the eighteenth century, coupled with these classes' emulation of the aristocratic taste, resulted in a wider use of trees along boulevards and the establishment of the "public garden."⁴⁰ Throughout Europe, however, the lower classes still did not have access to these gardens and were often excluded from them by entrance fees and claims of improper dress.⁴¹ In fact, in the early nineteenth century, members of the British House of Commons expressed their concern about the lack of public parks for the "humbler" classes, suggesting that trees might have a civilizing effect over these classes.⁴²

This brief overview of trees in Western cities suggests that treescapes have historically been desired mostly by the upper classes and were mostly inaccessible to the urban poor. How much of this history is still alive in modern cities? In Vancouver, interviewees take pride in their City's egalitarian tree allocation. Paul Montpellier, Vancouver's City Arborist, claims that "[w]e are trying to give the same service to everybody, and are planting for exactly the same aim: to ensure that every viable planting site is planted so [that] no one gets a different sort of funding, everyone gets the same service We plant all around."⁴³ Montpellier also states that "there's no neighborhood which vandalizes trees more [than the other]."⁴⁴ The next section further explores the question of tree allocation and preferences in the four North American cities researched here.

B. Trees and Class

Montpellier is a Canadian arborist. Some might claim that this identity explains his egalitarian tendencies. Conversely, the American cities researched here, Brookline and Boston, apparently present a radically different setting than that promoted in Canada. For example, Brookline's Tree Warden, Tom Brady, believes that Brookline should distinguish itself from its surroundings by investing

39. See MILLER, *supra* note 34.

40. See Lawrence, *supra* note 35.

41. *Id.* at 31.

42. *Id.* at 33.

43. Interview with Paul Montpellier, Vancouver City Arborist, in Vancouver, Can. (June 2005).

44. *Id.*

in a lush treescape.⁴⁵ I joined Brady for a routine inspection tour, crisscrossing between Brookline, Jamaica Plain, and Alston, Brookline’s neighbors in Boston. Every time we crossed the border to a non-Brookline territory, Brady pointed out that street trees tend to disappear and that the only visible trees were private. Confronted with these questions about the difference between American and Canadian tree cultures, Montpellier suggests a possible explanation for this difference, grounding it in the different attitudes that Canada and the United States hold toward tree investment. In his words,

[In] [e]very city I know of in Canada, the state funds everything. We take more taxes But if you don’t want to have any taxes you have to rely on the individuals to do this work, and [if] . . . you’re in a poor neighborhood the little money you have will be considered wasted if you spend it on planting trees in front of your house when you need it for rent.⁴⁶

According to Montpellier, economic factors are important considerations in urban treescaping. But while his explanation ties the difference in tree management to the two different national tax systems, other studies highlight local aspects, and in particular inner neighborhood class differences, in their explanation of the discrepancies in tree allocation. For example, a recent study of Milwaukee’s 2002 *free* “Adopt-A-Tree” campaign indicates that 89% of the participants in this tree campaign were homeowners, while the rentership rate in the city was 55%.⁴⁷ This study maintains that higher rentership levels tend to correlate with lower overall canopy cover, and provides various explanations for this negative correlation. First, the study suggests the American Environmental Justice movement has mostly been focused on exposing the discriminatory location and division of environmental *hazards* in poor communities and communities of color.⁴⁸ Trees, however, have not received similar levels of attention in the Environmental Justice movement, this study argues, because tree planting has been perceived as less important than other, more immediate, social concerns.⁴⁹ In other words, trees are seen as a luxury that those who struggle for everyday survival cannot be concerned about.

45. Interview with Thomas Brady, Brookline Tree Warden, in Brookline, Mass. (Sept. 28, 2005); Inspection Tour with Thomas Brady, Brookline Tree Warden, in Brookline, Mass. (Oct. 5, 2005).

46. Interview with Paul Montpellier, *supra* note 43.

47. Perkins et al., *supra* note 9, at 295.

48. *Id.* at 293.

49. *Id.*

Other explanations suggested by the Milwaukee study for the low engagement of renters in the “Adopt-A-Tree” campaign include the high mobility rate of renters, which makes it unlikely that they would enjoy the mature tree, which results in their reluctance to plant trees in the first place.⁵⁰ In addition, since increased property values often translate into increased rent payments, renters have a vested interest in *not* investing in their residence by planting trees.⁵¹ Finally, the study suggests that “exclusion from participation in an urban reforestation program is systemic and based upon an inability to purchase a home.”⁵² Although the renters’ status carries a different connotation in Boston, where “people are renting not because they are transient but because they can’t afford to live here . . . it’s the most expensive city in the country,”⁵³ it is probably still the case that renters in Boston also plant fewer trees near their rented houses.

C. Trees and the Public/Private Divide

“Because trees really are a transitional device, it’s the most democratic object you can ever imagine. . . . [T]rees *actually mediate*. . . . There’s nothing that creates more of a *common realm* than trees.”⁵⁴

“The main thing to determine whether or not [the tree] is private or public is usually a sidewalk.”⁵⁵

The premise that “all trees are part of nature” suggests that the differentiation of trees into various human categories, and the public/private divide in particular, should be irrelevant for tree administration in the city. Conversely, this subsection illustrates the important role that the public/private divide performs in the common and official discourses over city trees. In his statement cited at the beginning of the section, Peter Simon indicates that trees are considered emblems of the common sphere. Their location on sidewalks, which are constructed as public spaces, the management of trees by local, state, or federal governments, and the categorization of

50. *Id.*

51. *Id.* at 294.

52. *Id.*

53. Interview with Sherri Brokopp, Dir. of Cmty. Forest P’ship, Urban Ecology Inst., in Boston, Mass. (Nov. 3, 2005).

54. Interview with Peter Simon, Urban Forestry Specialist, Toronto Parks & Recreation, in Toronto, Can. (July 18, 2005) (emphasis added).

55. Interview with MariClaire McCartan, Urban Forester, Boston Parks & Recreation, in Boston, Mass. (Oct. 14, 2005).

trees as part of the “natural” realm—all increase the notion of “publicness” ascribed to trees.

At the same time, Simon laments the loss of the public domain to private space. In his words,

[N]ow there is a situation where the spaces between buildings are shrinking. There is a process where the public realm is getting smaller and smaller . . . [It used to be that] if anything was private, you carved it out of the public realm. And it has completely been inverted right now, where anything public is increasingly coming from a contribution from the private.⁵⁶

While his historical analysis could be debated, Simon’s claim highlights the wasteful overuse of resources that often accompanies open access, and is thus an important variation on the theme of the Tragedy of the Commons.⁵⁷ Clearly, Simon’s narrative, along with those presented by other interviewees, takes for granted and naturalizes the distinction between the public, private, and common domain, as if it had existed forever.⁵⁸ Moreover, the interviewees frequently declare their loyalty toward the public domain.⁵⁹

The first question that comes to mind when dealing with property-related themes is whether trees could, or should, be defined as property in the first place. “Friends of the public domain are particularly suspicious of property talk,” perceiving the discourse of property as the major cause for the shrinking of the public domain.⁶⁰ Others suggest that “the form, the substance, and the history of

56. Interview with Peter Simon, *supra* note 54.

57. See, e.g., RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* (3d ed. Little, Brown & Co. 1986) (1973); see also Carol Rose, *Romans, Roads, and Romantic Creators: Traditions of Public Property in the Information Age*, 66 *LAW & CONTEMP. PROBS.* 89, 89 (2003) (pointing, in her discussion of intellectual property rights, to the analogy between public domain and wilderness: “Like the jungle and its beasts, the public domain threatens to overrun them at every turn”); Garrett Hardin, *The Tragedy of the Commons*, 162 *SCIENCE* 1243 (1968).

58. For a historical analysis of the public/private divide in the city as a product of both the early nineteenth century legal doctrines that pertain to corporations and the liberal ideas of the American Revolution, see Gerold E. Frug, *The City as a Legal Concept*, 93 *HARVARD L. REV.* 1057 (1980).

59. See EVAN MCKENZIE, *PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT* 12 (1994). The romanticization of public property and the problems inherent in what is framed as the increasing privatization of American cities is the focus of an elaborate discussion in McKenzie’s book. *Id.* Also, exploring common interest developments (CIDs) in the United States since the 1980s, this book indicates that more than “thirty million Americans, or some 12 percent of the U.S. population” live in such developments, thus threatening the life of the city as we know it. *Id.*

60. Hanoch Dagan, *Property and the Public Domain*, 18 *YALE J.L. & HUMAN.* 84, 84 (2006); see also Lawrence Lessig, *Re-crafting a Public Domain*, 18 *YALE J.L. & HUMAN.* 56 (2006).

property convey lessons that are rather helpful to the goal . . . of re-crafting the public domain.”⁶¹ Accordingly, some scholars have developed nuanced categories of nonexclusive property, problematizing the traditional binary between private and public as mutually exclusive and independent. For example, Carol Rose relies on Roman law to suggest some possible alternatives to the thin categories currently used in property talk.⁶² Specifically, she defines *res nullius* as “things belonging to no one,” *res communes* as “things open to all by their nature,” *res publicae* as “things belonging to the public and open to the public by operation of law,” *res universitatis* as “property belonging to a (public) group in its corporate capacity,” and *res divini juris* as “things that are unowned by any human being because they are sacred, holy, or religious.”⁶³ Of these different notions of nonexclusive and exclusive properties, where do the interviewees, mostly urban government officials, place trees?

Notably, when assigning trees into either a public or a private domain, the underlying assumption of most of the interviewees is that they are properly categorized as property. This categorization seems to be based, more than anything else, on the intuitive link between trees and land. The tree/land link makes trees into an inseparable part of the notion of territory, perhaps even more so than buildings.⁶⁴ Also, since they seem static, trees are distinguished from the more transient natural elements in the city, such as birds, which are categorized accordingly as “*ferae naturae*” (wild nature).

Indeed, the field of property has historically been concerned with the use of land.⁶⁵ The categorization of a thing as property in Western legal thought implies “a tendency to agglomerate in a single legal person, preferably the one currently possessed of the thing that is the object of inquiry, the exclusive right to possess, privilege to use, and power to convey the thing.”⁶⁶ Notwithstanding the quality of the

61. Dagan, *supra* note 60, at 85.

62. Rose, *supra* note 57, at 91–92.

63. *Id.* at 92–109.

64. For an in-depth exploration of the connection between trees, nationhood, and law in Israel and Palestine see IRUS BRAVERMAN, *PLANTED FLAGS: TREES, LAND, AND LAW IN ISRAEL/PALESTINE* (Cambridge Univ. Press forthcoming 2009).

65. See Thomas Grey, *The Disintegration of Property*, in *PROPERTY: NOMOS XXII* 69, 71 (J. Roland Pennock & John W. Chapman eds., 1980).

66. Charles Donahue, *The Future of the Concept of Property Predicted from Its Past*, in *PROPERTY: NOMOS XXII* 28, 32 (J. Roland Pennock & John W. Chapman eds., 1980). Although many now doubt the applicability of the term “property,” Donahue thinks that it is somewhat early to announce that “property is dead.” *Id.*

thing itself, the understanding of the term property as a bundle of exclusive rights implies a human/nonhuman relationship of a certain kind: the control or domination of the nonhuman by the human and, in particular, by the individual established through liberal thought. This contention is based on the clear Hegelian split between Man and Nature, a split that has recently been challenged by certain environmental approaches. In particular, the Deep Ecology movement contends that not only sentient creatures, but also all living things, have an inherent value and a moral significance that is independent of their use by humans, or even of human existence.⁶⁷ When applied in the legal field, this sort of analysis results in granting legal standing or legal rights to natural entities. This also results in undermining the distinction between Man and Nature that is essential to the Hegelian theory of liberation and rights.

While property scholars may claim that ownership is not the focal concern of property discourse, the individuals interviewed as part of this study perceive property as things that are fully and completely owned by persons. As a result, legal restraints on the free use of one's property are conceived as departures from an ideal conception of full property.⁶⁸ Similarly, the scholarly legal declaration that the distinction between public and private property has exhausted itself, or has strangled itself in its own “loopification,”⁶⁹ does not hold water in certain popular discourses, as those are reflected in the narratives of the interviewees of this study. Indeed, the complexity of “bundle of rights” models that are so prominent in modern legal analysis, as well as some legal scholars' declaration of the dissipation of the private/public divide, dissipate when discussing trees with governmental officials, activists, and any non-legal scholar for that matter.

The interviewees explain that the distinction between private and public trees is based on the status of the land that these trees are situated upon. Trees that are located on city-owned land are categorized as “city trees,” while those on private, state, or federal property are designated as the exclusive possession of the respective entity. Institutional allocations of authority and responsibility over trees rise or fall based on the distinction between public and private

67. P.S. Elder, *Legal Rights for Nature—The Wrong Answer for the Right(s) Question*, 22 OSGOODE HALL L.J. 285, 286 (1984).

68. Grey, *supra* note 65, at 69.

69. Duncan Kennedy, *The Stages of the Decline of the Public/Private Distinction*, 130 U. PA. L. REV. 1349, 1355–57 (1982).

property, as well as between the different public entities and legal arrangements applicable to trees within each category. Toronto's City Forester, Richard Ubbens, explains the consequences of the divide between public and private in his jurisdiction:

So all the trees sitting out there in the public boulevard is [sic] *city* property. We have total control [over them]. On *private* property there are other pieces of legislation and by-laws We're not saying that you can't remove trees, we're just saying that if . . . you're going to injure trees or if you are going to remove trees you've gotta have a permit. . . . If they plant them on the road-line they become city-owned trees. [It's] like if I planted a tree on your property I don't own it. And if it's in a bad place we will move it or replace it.⁷⁰

Paul Montpellier, Vancouver's City Arborist, explains the division between private and public trees as it pertains to his jurisdiction:

Since we realize we have no authority over the private tree[,] they don't play a particularly big part in our species selection. The private tree by[-]law slows the process of removing a tree down, but it doesn't prevent it. You're allowed by law [i]n Vancouver in most property to remove a tree . . . [but if you take down a tree on your private property] then you have to replant [a tree] on your property.⁷¹

While Vancouver and Toronto represent a model of restricted city governance over private trees, Boston and Brookline seem to exercise no such authority. In Boston and Brookline, when private trees become infested, the city apparently lacks the power to intervene. This approach is exemplified in the case of the Dutch elm disease. The Dutch elm disease killed some 77 million American elms in what has been depicted as "an ecological calamity that changed the face of the American nation."⁷² An extraordinary amount of research was dedicated to finding an inoculation that might cure the Dutch elm disease, and attempts to clone a disease-resistant variety of the Americana elm are under way.⁷³ In light of the extent of this emergency, one would assume that the City of Boston would

70. Interview with Richard Ubbens, Toronto City Forester, in Toronto, Can. (May 27, 2005) (emphasis added).

71. Interview with Paul Montpellier, *supra* note 43.

72. TOM CAMPANELLA, *REPUBLIC OF SHADE: NEW ENGLAND AND THE AMERICAN ELM* 3 (2003).

73. For the elaborate story on the replanting of elms in American cities, including the institutional rivalries on this issue, such as the patenting of the American Liberty elm, see *id.* at 171–83.

be armed with sufficient legal grounds to enter private property for the purpose of eliminating the source of danger, as it might be able to do in the case of a serious human communicable disease. However, the Boston and Brookline city officials interviewed in this study insist that the private elm tree is completely out of their jurisdictional control, and that the city has no remedy but to resort to spending large sums of money to protect the public elm trees from possible infection by the private elms. MariClaire McCartan, Boston's Urban Forester, explains:

The elm will start dying at the tips and you can just see it. To me it jumps out and they've sent letters and said, 'hey are you aware that there's a Dutch elm disease in your yard and this will affect all the other Dutch elms in the area?' Some [people] will move fast, but some will not. They will need to pay for [the process] because it's there [sic] own private property, we're asking out of courtesy but . . . [w]e won't remove [the tree] because it's on private property and there's [sic] liability issues there. Even if [the owners] agree, you can't go on private property. And that's why we inject the trees, so that they have the hormones to keep fighting [the infection if they get it from the private trees that are infected]. [But this is] a huge maintenance issue [that costs the city large amounts of money].⁷⁴

While the cultural explanation for this sacredness of private property is not within the scope of this article,⁷⁵ it is worthwhile to note the importance and implications of the public/private divide in the everyday narratives of city managers. MariClaire McCartan, Boston's Urban Forester, describes the mundane practices that result from the divide between city, state, and private property:

If we get a call we go out there to determine if it's ours or if it's a state tree. If they're state owned trees, we can't touch them. And no worries, we have plenty of [trees of] our own. So you have to know your divisions. We can't touch it if it's not ours.

. . . .

[If a]nything from a private tree falls to the road or sidewalk we have to clean it up because it's a public right of way, [which] takes a big chunk of our time. [But i]f we're running out of room we throw it back into their property, which never goes well with them for some reason.⁷⁶

74. Interview with MariClaire McCartan, *supra* note 55.

75. One explanation for this radical restriction on public access to private trees to prevent infection might be in the generally strict attitudes toward private property in New England. See generally WILLIAM CRONON, *CHANGES IN THE LAND* (1983).

76. Interview with MariClaire McCartan, *supra* note 55.

Although “on the books” not a simple distinction, the distinction between private and public trees, and between the variety of governmental jurisdictions that follows, still determines the specific legal regime that applies in each instance. This situation seems counterintuitive to the strong ecological discourse promoted by the cities studied here and described briefly above. If trees are indeed such an ecological asset for the city, and if the urban forest is now the name of the game rather than the individualistic perception of trees, why has the city been confining the trees’ maintenance and preservation only to public spaces? And, if to take this inquiry one step further, why not change the legal property definition of trees so that they would be considered an intrinsic part of the urban park, which would render them *res publicae* (“things belonging to the public and open to the public by operation of law”)⁷⁷ or even *res divini juris* (“things that are unowned by any human being because they are sacred, holy, or religious”)?⁷⁸ Apparently, the exclusivity principle, which applies a binary private/public divide to the everyday governance of trees in the American cities studied here, overrides other urban discourses, including that of the “Green City” (the latter would probably imply more of a *res divini juris* character). This realization undermines the green perspective, hinting that there might be other factors behind the recently fashionable urban tree fetish. The following sections examine the interests and purposes that rest at the core of the prevalent “love of trees” discourse within the cities I have studied here.

D. Trees as Cultural Signifiers

I have already mentioned the seemingly ubiquitous nature of the “everyone loves trees” narrative among the city government interviewees that have participated in this study. However, a slight digging beneath the surface questions this uniform love story. For example, Boston’s Urban Forester, MariClaire McCartan, describes a

77. Rose, *supra* note 57, at 99 (“The vision of the public domain in *res publicae* is tame rather than wild, more like a park than a wilderness, a set of public spaces most often overseen by organized public institutions.”).

78. *Id.* at 109 (“[T]he great wilderness parks, deserts and seashores, with their sense of the sublime and the vast, may in some ways fill the role of *res divini juris*. Such places suggest to the visitor the majesty of creation, the vastness of space, the untamed-ness of something outside human capacity to grasp. If there is a role for *res divini juris* as tangible public property in our modern jurisprudence, surely this is one place where it resides.”). I would suggest that the “Green City” discourse applies this notion to trees in the city, as survivors of that “helpless giant.”

recent occurrence in which “someone had drilled holes to the tree, like an inch in diameter, and they filled the holes with gasoline. They really wanted this tree gone.”⁷⁹ Indeed, “[t]he tree is an orphan,” declares Peter Simon, an urban planner and Toronto’s Urban Forestry expert, at the start of his interview.⁸⁰ But while Simon initially suggests the love of trees as a universal theme, he later restricts this notion. Although people love individual trees, he contends, they have, since early times, been threatened by the image of the forest.⁸¹ Simon then complains that “everybody’s saying ‘plant trees plant trees’ . . . and everybody [feels good] about taking care of that wounded soldier, even as we are wiping out whole squadrons of what [we think] is . . . [the] enemy.”⁸² “We plant trees,” he concludes, “while at the same time we remove more and more soil from the city, thereby harming these same trees.”⁸³

While Simon speaks of humans’ primordial love of trees and fear of forests, and complains about how people’s declarations are inconsistent with their immediate actions in the city, Vancouver’s tree inspector, Garry Onysco, describes the primordial human fear as encompassing the individual tree as well. In his words, “[they] fear that there’s going to be an earthquake . . . [and the] tree . . . will fall on their house, no matter how far away [the tree] is [from the house].”⁸⁴ Onysco further ridicules this fear, asserting, cynically, that “if you look at this tree . . . [i]t’s not going to leap across the road onto that roof.”⁸⁵ Human fear of untamed nature is thus projected onto the single tree, says Onysco, which in turn threatens what people perceive as their safe space.⁸⁶ Based on his sixteen years of constant interactions with people as a city inspector, Onysco concludes that “half the people love trees and half the people either hate trees or don’t care.”⁸⁷

Although situated thousands of miles away, Tom Brady, Brookline’s Tree Warden, provides a similar account of the

79. Interview with MariClaire McCartan, *supra* note 55.

80. Interview with Peter Simon, *supra* note 54.

81. *Id.*

82. *Id.*

83. *See id.*

84. Interview with Garry Onysco, Vancouver City Tree Inspector, in Vancouver, Can. (June 29, 2005).

85. *Id.*

86. *Id.*

87. *Id.*

relationship between the people in his city and its trees. “[T]rees trigger a ton of emotion,” he asserts, adding that “[t]here’s really no in-between with trees, it’s all or nothing, it’s a very strong and visceral reaction.”⁸⁸ Paul Montpellier, Vancouver’s City Arborist, supports this “all-or-nothing” depiction when suggesting that “side by side, anywhere in the city, one person would love the tree and one would want it down.”⁸⁹ Finally, Leif Fixen, another Urban Forester (this time from Boston), complains that while “[t]here’s a general acknowledgment that trees are important[,] . . . there’s [sic] people out there that will deliberately *kill* their tree in their front yard. I mean it’s all French to me.”⁹⁰

Importantly, all of the interviewees insist that the basic human relationship to trees, be it love or hate, is a personal and individual matter that has nothing to do with class, race, ethnicity, or even culture. Bill Stephens, Vancouver’s Deputy Arborist Technician, ties what he describes as people’s reluctance to talk about collectives when discussing trees with basic notions of individuality. In his words, “to be thinking along these lines is kind of blurring out the individual, isn’t it?”⁹¹ Yet later in the interview, Stephens himself notices that

Italians, for example . . . first thing they do, you give an Italian a yard, they’ll plant stuff that derives fresh food, that’s a cultural thing. . . . So the kinds of plants that you want to put on your dinner table usually require sun, right? And they come from a sunnier place than [it is] here and so you know a lot of them don’t like the idea of a big huge tree that casts shade on their house or front lawn.⁹²

Ian Buchanan, the Manager of Natural Resources for the York region of Toronto, provides a similar depiction of the Italians’ attitudes toward trees in his jurisdiction. Buchanan states,

The city of Oben[, w]hich is one of our nine municipalities[,] has a strong Italian input[] [sic], and when the Asian Long Horn beetle invaded [many] trees were removed. [After that] we [in the natural resources department] were going, ‘well let’s rebuild the urban forest!’ [The Italians] have [even] been offered money to plant

88. Interview with Thomas Brady, *supra* note 45.

89. Interview with Paul Montpellier, *supra* note 43.

90. Interview with Leif Fixen, Urban Forester, Boston Parks & Recreation, in Boston, Mass. (Sept. 23, 2005) (emphasis added).

91. Interview with Bill Stephens, Deputy Arborist Technician, Vancouver Park Bd., in Vancouver, Can. (June 26, 2005).

92. *Id.*

trees but the uptake was low, low, low. The Asian Long Horn was a little bit of a landscape design [in this municipality].⁹³

Stephens’ and Buchanan’s explanations for the difference in their communities’ attitudes toward street trees is mostly based on the climate and tradition in the immigrants’ home landscapes and communities, which they then try to duplicate in their new Canadian home. Yet the conflict between ornamental trees, on one hand, and fruit-bearing trees, on the other hand, is not only the result of a “salad-loving” culture, but also corresponds with a long history of class and status landscaping. Vancouver’s City Arborist, Paul Montpellier, mentions a local variation of this conflict in his jurisdiction:

[Recently,] there was a push in Vancouver for fruit trees on the streets and some of the politicians were very interested, because [it could] provid[e] food for people [But] there’s an awful lot of problems with trees dropping fruit all over city streets [Indeed,] Richard [Toronto’s Urban Forester] told me that they actually⁹⁴ passed a by-law to remove . . . fruit trees from their streets.

Apparently, the installation of fruit trees on city streets has failed in Toronto. According to the interviewees, this failure was not due to a lack of need for ready food for the urban poor, but rather because of sanitary concerns. The fruit, several of the interviewees explained, was rotting on the streets and thus promoting disease.⁹⁵ Another example for a resort to a sanitary rationale occurs in the context of the Asian community in Vancouver. But before I discuss this, let me mention another narrative that could possibly counteract the supposedly all-encompassing “everybody loves trees” narrative: that of race.

E. The Color Green: Trees and Race

Trees are green, or at least so they are frequently imagined. But beyond their greenness, do trees also have other colors? The issue of trees and class is the focus of a study conducted in Milwaukee.⁹⁶ Despite its acknowledgment of the high percentage of black people within the tenant community discussed therein, this study nonetheless devotes most of its focus to class analysis, largely avoiding the issue of

93. Interview with Ian Buchanan, Manager of Natural Res. and Forestry Servs., York Region, in Toronto, Can. (Aug. 8, 2005).

94. Interview with Paul Montpellier, *supra* note 43.

95. *E.g., id.*

96. Perkins et al., *supra* note 9.

race.⁹⁷ Traditionally, the relationship between trees and race has been a focus of the Environmental Justice movement. Foods and Trees for Africa's "Trees for Homes" program, for example, takes the position that "a house is not a home without a tree," and thus aims to provide "plant material . . . for those living in low cost housing developments."⁹⁸ This organization also points out the discrepancy in the allocation of trees in various areas in and around Johannesburg, South Africa. Finally, the organization comments that while there are six million trees in the city of Johannesburg, making it the most "treefull" city in the world, in the nearby predominately black townships there is less green and more grey.⁹⁹ The argument that people of color get less of anything that is good (trees) and more of everything that is bad (environmental hazards, crime) is a central theme of the Environmental Justice movement, which attempts to correct these discrepancies through what it perceives as a more egalitarian allocation of resources.¹⁰⁰ Interestingly, members of the Environmental Justice movement have rarely asked whether trees are actually desired by communities of color.

Recent studies suggest that race plays a significant role in landscape preferences. For example, while black residents of Chicago preferred to conduct their social interactions in developed and managed parks, white Chicago residents preferred natural undeveloped sites that enabled solitude.¹⁰¹ Another example is from a stratified random sample of 743 black Virgin Islands residents. These residents responded more favorably to scenes that included built structures and less favorably to scenes absent of such structures, in

97. *Id.*

98. Philippa Garson, SouthAfrica.info, Food and Trees for Africa (May 14, 2002), <http://www.southafrica.info/about/sustainable/wsfoodtrees.htm> ("Growing trees and other plants in the townships [of South Africa] brightens the environment, prevents soil erosion, and provides wind breaks, as well as food, income and activities for many unemployed people.").

99. *Id.*; see also Food & Trees for Africa, Trees for Homes, http://www.trees.co.za/index.php?option=com_content&task=view&id=52&Itemid=70 (last visited Dec. 26, 2008); B. Low, *Grey to Green; the Greening of South Africa's Townships* (1994), <http://www.bgci.org/resources/article/0330/> (last visited Dec. 15, 2008).

100. See generally U.S. Env'tl. Prot. Agency, Environmental Justice, <http://www.epa.gov/compliance/environmentaljustice/> (last visited Oct. 19, 2008); Env'tl. Justice Res. Ctr., Principles of Environmental Justice, <http://www.ejrc.cau.edu/princej.html> (last visited Dec. 15, 2008); CNN.com, *Bullard: Green Issue is Black and White*, July 17, 2007, <http://www.cnn.com/2007/US/07/17/pysk.bullard/index.html> (last visited Dec. 15, 2008) (noting that minorities are more likely to live near hazardous waste facilities and that this population is at higher risk for health problems).

101. Kaplan & Talbot, *supra* note 17, at 109.

comparison with a sample of students at the University of Massachusetts.¹⁰² Several other studies also suggest the existence of ethnic differences along similar divides. For example, a 1983 study suggested that while educators preferred unmodified natural areas, their inner-city seventh grade students favored scenes depicting urban life, such as commercial strips and parking areas.¹⁰³ Trees and greenery, this study concluded, played a relatively minor role in the preferences of seventh graders.¹⁰⁴ Finally, relying on photographs of mundane nature in the city, three additional studies suggest substantial differences in landscape preferences along racial divides.¹⁰⁵ Again, settings with dense vegetation that provides a sense of enclosure were disfavored by blacks.¹⁰⁶ By contrast, blacks generally favored outdoor settings which include built components with a sense of openness and visibility.¹⁰⁷ Nonetheless, the researchers insisted “that blacks greatly value their contacts with nature, and are not different from whites in this regard.”¹⁰⁸ In their words, “the natural environment is important and valued . . . regardless of demographic characteristics.”¹⁰⁹

Either by concluding that the alienation felt by blacks is directed only toward certain arrangements of nature in the city, or by suggesting that this alienation is directed toward nature in the city at large, the various researchers largely agree about the existence of landscape preferences on a racial divide. At the same time, most researchers are vague about the possible reasons for such racial preferences. They fail to address *why* it is that blacks prefer less tree canopy than whites. One might argue that humans’ relationship to nature, and to trees in particular, is mostly an acquired taste. Hence, that black communities find nature and trees more unattractive than white communities is mostly a *consequence* of their lower exposure to trees and nature, rather than as a *reason* for the relative lack of trees in black communities. This explanation resonates with the Environmental Justice argument that emphasizes the *a priori*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 110.

106. *Id.* at 114.

107. *Id.* at 113.

108. *Id.* at 116.

109. *Id.*

disproportionate allocation of resources according to racial factors.¹¹⁰ Another explanation of this racial difference is scientific. It suggests that these preferences are largely based on genetic factors, such as skin pigmentation and sun tolerance. One way or another, the very need for such explanations in itself highlights the inconvenience that people feel when there is any deviation from the “everybody loves trees” norm.

Boston’s Urban Forester, MariClaire McCartan, suggests her own perspective on the relationship between trees and race:

I don’t see the difference between [our tree] investment[s] in not so good areas and in well off areas. For me, personally, I prefer going in areas that are a little less well off in the sense that in areas that people are well off people expect that you come in and do this. And they feel that we’re always late, and [complain that] we should’ve done it before. And you go in those other areas [of communities of color] and people come out and say thank you.¹¹¹

F. New People, Old Trees: Trees as a Matter of Status

Carol Weinbaum, a tree activist and resident of Toronto’s upper-class neighborhood, Casa Loma, describes the origins of Toronto’s Private Tree by-law.¹¹² In her words,

[The developer] came and tried to cut down that one tree. [When] I heard the sound, I went out there and [immediately] called Richard Ubbens [Toronto’s City Forester], the councilor, a TV reporter, and the police, and everyone came out and the police were trying to say that it was private property and we shouldn’t be there, but the councilor was saying that there is some obscure law that said if the issue [is] in the interest of the neighborhood you’re allowed to be in private property. They faxed over the law to my fax machine and I took it over to the policeman and he let us stay [on the property to protect the tree]. And when the developer came it was like a stand-off, because I was standing underneath [the tree] and he wouldn’t do it [cut the tree]. And I remember standing there . . . getting everybody to all be standing underneath that tree . . . [T]he city then became so concerned that they put security around the house over the weekend and passed the by-law on Monday . . . This was the incident that made the city pass the law.¹¹³

110. See, e.g., *UNEQUAL PROTECTION: ENVIRONMENTAL JUSTICE AND COMMUNITIES OF COLOR* (Robert D. Bullard ed., 1994).

111. Interview with MariClaire McCartan, *supra* note 55.

112. TORONTO, CAN., MUN. CODE § 813, art. III (2008).

113. Interview with Carol Weinbaum, Tree Activist, in Toronto, Can. (July 5, 2005).

Weinbaum's depiction of the process through which Toronto's Private Tree by-law was passed was also supported by other interviewees. If a person wants to remove a private tree, Toronto's by-law requires her not only to attain a permit for doing so, but also to suggest a feasible tree replacement alternative.¹¹⁴

The events described by Weinbaum illustrate that the question of class can get a bit murky when development interests are thrown into the picture. While considered by many environmentalists to be good for nature, the “condensed city” approach (densely populated cities in the midst of rural islands) can cause an elevation of land values, thereby placing trees in conflict with buildings.¹¹⁵ Subsequently, trees may turn into the underdogs of urbanization and the victims of capital investment.

Steve Posen, another resident of Toronto's Casa Loma neighborhood, echoes Weinbaum's approach. In his words, “[trees are] of interest to developers who want to cut them down so that they can develop land, and [on the other hand they are of] interest [to] people who live in neighborhoods who try to defend the beauty as well as for the reasons of health.”¹¹⁶ Indeed, Weinbaum depicts her struggle in the name of trees as a struggle against developers. However, in her statements there is also a mention of ethnicity. Here, for example, is another of her depictions of the struggle over Toronto's Private Tree by-law, which again occurred in the Casa Loma neighborhood:

[O]ne day [the developer] sent vans of Portuguese construction workers with saws and hatchets to girdle the trees. . . . We were all in the neighborhood. . . . [I]t was a Friday afternoon, kids were coming back from school, and we were all jumping to the property. We just went out to them and physically tried to stop them. . . . [But] they worked fast and used chain saws I think the fact that somebody . . . would be willing to hire out-of-work construction workers and send them like in no-name trucks to jump out and attack trees in a quiet neighborhood as children are playing in the street, is just too much. *With machetes and chainsaws, it was very [much] not [like] Canada.*¹¹⁷

114. TORONTO, CAN., MUN. CODE § 813-10, 813-18.

115. Jim, *supra* note 7; *see also* TREES AND BUILDINGS: COMPLEMENT OR CONFLICT? (Tony Aldous ed., 1979).

116. Interview with Steve Posen, Lawyer and Casa Loma Resident, in Toronto, Can. (June 13, 2005).

117. Interview with Carol Weinbaum, *supra* note 113 (emphasis added).

Development and technology, along with urbanization and modernism, are posed by Weinbaum as harming the innocence of school children and the tranquility of Canadian communities, which in turn unite against the (non-Canadian) developers for the protection of their trees.¹¹⁸ For Weinbaum, the conflict is not between two legitimate attitudes toward urban space, but rather a moral battle between good and bad—a battle over Canada’s civic survival.¹¹⁹ The interchangeability between the love of trees, class, status, and ethnicity is also clear in her explanation of the dynamics of tree cutting in her neighborhood.

Initially, people fall in love with the house . . . [but] then they come in and it’s not big enough, and the trees are in the way and all that. And they apply to take the tree down. And neighbors are sick about it! . . . [I]f a house of 6000 feet is not big enough for you and if the oak tree in the back is in your way buy another! Because for people in the neighborhood and for people in the city, if you’re entitled to take down that tree for the twenty or thirty years that you live there, the city loses this resource forever. And that mature tree . . . [provides] a habitat and filtered air in a way that planting [a] new little [one] is not going to be an equivalent for, right? . . . And the new people never took care of them. . . . It’s always the *new people* coming in. The *old people* are happy with the trees.¹²⁰

In her distinction between “old” and “new” people, Weinbaum is probably not alluding to the age of these people, but rather to the number of years that they have resided in the neighborhood. “New” people are perceived as invading and destabilizing existing community life, and thus as violating its moral balance with nature. By utilizing these seemingly factual terms, Weinbaum conceals and neutralizes certain ideological assumptions about the actual identity of these “old/new” people. In her struggle in the name of neighborhood trees, Weinbaum thus translates the trees into key signifiers of status.

[T]he [legal] win was based on [the fact that] destroying the trees would destroy the character of the neighborhood, because we were able to make the case that the character of this neighborhood was based on its urban forest So the case we made here is that the trees are a community value, a value to the neighborhood, and that we wanted the value to be based on the tree rather than on the development[al] potential for density [M]ostly, people were supportive, because, even selfishly speaking, they just felt [that] the

118. *See id.*

119. *Id.*

120. *Id.* (emphasis added).

value of their properties is based on the value of their trees, and if everybody comes in and cuts down their trees the area will look like a suburb. . . . [This issue] really divided the neighborhood. . . . [T]he people who bought that house from the developer still didn't [sic] talk to me.¹²¹

Weinbaum makes a hierarchical distinction between urban and suburban landscapes, implicitly inviting “newcomers” to move “out” there—to the ugly, treeless suburbs—where they can build as big a house as their heart desires with their money.¹²² The aristocratic definition of the urban treescape thus indirectly excludes newcomers from the community. This is accomplished by means that are guised as natural, neutral, and universal. Through his treescaping approach, Steve Posen—also a resident of the Casa Loma neighborhood in Toronto—similarly constructs a clear “us” and “them.”

I wasn't involved directly but I watched and actually supported [this tree struggle] because I didn't want that property re-divided, because I thought it would be bad for the neighborhood. *Among other things* I didn't want the trees to be cut down. I didn't mean “no trees to be cut down” because some trees should be cut down. In my view *it was not in keeping with the neighborhood to have those narrow lawns*. Anyway, the point is that the big opposition came when he [the developer] took an axe and actually *killed* the trees.¹²³

Like Weinbaum, Posen also makes no explicit mention of the ethnic identity and social status of the people behind the “development.”¹²⁴

David Ley describes a strikingly similar tree story.¹²⁵ This story occurs in Kerrisdale, an established inner suburb of Vancouver, Canada. In Ley's story, however, a clear identity is attached to the “newcomers.” The two opposing groups in the fight over the two Sequoia trees are the new Hong Kong and Chinese immigrants, on the one hand, and the old Anglo-Saxon residents of the city, on the other hand.¹²⁶ Ley begins his article, accordingly, by stating that “[i]n 1990, Harry Liang, a new home owner . . . decided to remove two 30 m sequoia trees from his front lawn.”¹²⁷ Although a pseudonym, Ley's

121. *Id.*

122. *Id.*

123. Interview with Steve Posen, *supra* note 116 (emphasis added).

124. *Id.*

125. David Ley, *Between Europe and Asia: The Case of the Missing Sequoias*, 2 ECUMENE 185 (1995).

126. *Id.* at 185, 189.

127. *Id.* at 185 (footnote omitted).

choice of an Asian name for the “tree remover” is clearly not incidental. Instead, Ley presents several cultural identities that are significant for this specific tree struggle story. As Ley explains, “[w]ealthy residents of Hong Kong or Taiwan sustain interest in traditional cultural forms like *feng shui*, . . . but they also eagerly embrace the modern world and the capitalist urge for creative destruction. In identity formation, traditional culture is often subordinate to modernity’s fascination for the new.”¹²⁸

The “old/new” split described by Ley in the Vancouver context thus strongly resembles Weinbaum’s account of the Torontonians’ struggle. Ley also quotes “old” residents’ statements made in this context:

Our trees are part of our heritage. These people come—with no concern for our past—they have not been a part of the growth and development of our beautiful city—they have not been paying taxes for years. They have no right to devastate the residential areas [T]his is a place to live not just a place to make money out of.¹²⁹

Another common aspect for both Toronto’s Casa Loma and Vancouver’s Kerrisdale tree struggles is their intimate tie between status and citizenry. For example, Weinbaum complains that the developer sent her “a card with a maple leaf, rather than an oak leaf” (oak being the disputed tree).¹³⁰ She insinuates that the developer cannot even tell the difference between these trees.¹³¹ But risking an over-interpretation of this seemingly insignificant act, one might suggest that by placing a maple leaf on the card the developer implies that the struggle is not merely over trees, but also over citizenship (the maple leaf being Canada’s most prominent symbol). In Ley’s depiction as well, Vancouver’s Chinese immigrants have been utilizing the narrative of citizenry.¹³²

Finally, in both neighborhoods, the “old” residents have insisted that the “downzoning” has nothing to do with race.¹³³ Weinbaum underplays racial factors when she suggests that “here it’s more a *class* issue, *just* money: I have money and so I can do whatever I

128. *Id.* at 192.

129. *Id.* at 197.

130. Interview with Carol Weinbaum, *supra* note 113.

131. *See id.*

132. *See* Ley, *supra* note 125, at 198.

133. “Downzoning” means to reclassify an area or property into a lower, and typically more restrictive, zoning band. *See, e.g.,* THE NEW OXFORD AMERICAN DICTIONARY 514 (2001) (defining “downzone” as “assign[ing] (land or property) to a zoning grade under which the permitted density of housing and development is reduced”).

want,”¹³⁴ while the leader of the Vancouver Homeowner Association similarly insists that downzoning is “not an issue of ‘race’ but of ‘greed.’”¹³⁵

Beyond their manifestations on the urban scale, ethnic tensions around treescaping are also apparent on a global scale. Some warn, for example, that since green space is crucial for human quality of life, a compact city that is deprived of greenery will suffer in the long run.¹³⁶ Subsequently, it has been asserted that “[t]he case of cities in developing countries in particular is worrying because of the urge to take the myopic path of developing first and making amends later, and failing to benefit from other cities’ experience.”¹³⁷ There seems to be a hint of colonialism in this argument. The already developed West now utilizes a conservation etiquette to control the development of currently developing countries. This control is concealed and legitimized behind a “natural” environmental cause.

Most tree bureaucrats interviewed for this study take a clear position in this rather complex conflict between tree development and conservation. While mediating such tensions in their everyday work, their loyalty, they have assured me, is toward trees. In effect, Vancouver’s tree officials offer another perspective to that offered by Ley about the particular roles performed by the Asian community in Vancouver. For example, Bill Stephens, Vancouver’s Deputy Arborist Technician, explains the Asian relationship to trees as follows:

[The Asian’s perceived disdain for trees is] not a cultural thing. It is the fact that there’s [sic] rural and there’s [sic] urban areas in Asia, and it used to be the rural Chinese who came over here to work on the railways and so forth and get settled here. They love ‘em [trees]. . . . And people from Hong Kong . . . don’t see so many trees there, and they aren’t sure how to cope with them. They like ‘em, but they don’t like a mess, right? When you’re in a densely populated city, a well-run city—I think Hong Kong is probably pretty well run—sanitation is huge on everybody’s mind, it has to be. *So you want to be able to clean everything right down to the bone*, all the time, to keep it sanitary, *and some trees just won’t let you do that, they’ll keep dropping something or another on you*. And so we hear from them . . . I don’t know, I grew up in Ontario and we had trees all over the place and I love ‘em, you know? . . .

134. Interview with Carol Weinbaum, *supra* note 113 (emphasis added).

135. Ley, *supra* note 125, at 200.

136. See Laura E. Jackson, *The Relationship of Urban Design to Human Health and Condition*, 64 LANDSCAPE & URB. PLAN. 191 (2003).

137. Jim, *supra* note 7, at 312 (citation omitted).

[M]aybe it's because of my Scottish heritage, you know, we don't have a lot of pigment in our skin and so we burn easily. So give me shade over sun, right?¹³⁸

Stephens' explanation of ethnic tree preferences is an interesting blend of hygiene, geography, and genetics. Similarly, Gary Onysco, Vancouver's tree inspector, suggests that "the new immigrants are maybe a little less trustful."¹³⁹ "They're not used to trees," he continues, "they don't want an outdoor space, they want a condo, they don't even seem to want a balcony, they're not outdoor oriented [T]hey believe that there is a lot of disease and problems coming out of trees."¹⁴⁰ Both Stephens and Onysco refer to sanitation and hygiene as necessities of urban life in China and as providing a scientific explanation for this population's relationship to nature in general, and to trees in particular.¹⁴¹ However, the hygienic scene is not a technical matter of fact, but rather a historical and cultural configuration.

Beyond the role of hygiene, Onysco also mentions the issue of trust.¹⁴² It is unclear from what he says, though, what is the cause of the Asians' distrust—is it the tree's sanitary condition or rather the central government that has situated them in the city in the first place?¹⁴³ Trees are perceived by some of Vancouver's Asian community as potential sources of hygienic danger. At the same time, these trees are also perceived as representing the government's control over city space, something that this community may be suspicious of precisely because of its cultural and historical background. The narratives presented by Stephens and Onysco imply, then, that for certain Asians, the tree represents an "otherness": either natural or governmental order, both not to be trusted.¹⁴⁴ In other words, the Asian perception of trees in Vancouver merges together nature and government, and both in turn are perceived as uncontrollable and unpredictable forces that have the power to interfere with the normal order of things.¹⁴⁵

138. Interview with Bill Stephens, *supra* note 91 (emphasis added).

139. Interview with Garry Onysco, *supra* note 84.

140. *Id.*

141. See Interview with Bill Stephens, *supra* note 91; Interview with Garry Onysco, *supra* note 84.

142. Interview with Garry Onysco, *supra* note 84.

143. *Id.*

144. See *id.*; Interview with Bill Stephens, *supra* note 91.

145. Curiously, according to Chinese sources, in the early 1950s the United States waged an unconventional form of germ-warfare against China. This resulted in mass public health

It is not only newcomers who express fear of infestation caused by, and related to, trees. Tree professionals, such as the arborists and foresters of Vancouver and Toronto, also state their fear of the spread of disease and pests. But rather than directing this fear toward trees, they direct it toward what they refer to as “Chinese pests” and, most recently, toward the Asian Long Horn Beetle. Richard Ubbens, Toronto’s Urban Forester, remarks, for example, that “[these] bugs are a huge problem in the city. There is [now] a new one that attacks Ash trees. *It comes from China. Another one from China.*”¹⁴⁶ Sophie Dessureault, Vancouver’s Integrated Pest Manager, acknowledges that the source of most pests is in China, but offers a different explanation than Ubben’s geographic invasion theory.¹⁴⁷ In her words, “there is a disagreement about whether the Asian Long Horn Beetle is actually from China. We’ve had cases where you plant in an area and a native insect got crazy. We created a pest by planting a new plant.”¹⁴⁸ According to Dessureault, then, the invasion is not ethnic but scientific.¹⁴⁹

For the most part, the Asian “invasion” into the North American landscape is portrayed in the official municipal narrative as a twofold process. First, the Asians are perceived as problematically sanitizing the North American city from its tree habitat through their utilization of an extreme developmental approach. Then, Asia is portrayed as attacking North Americans’ natural order through infiltrating “bugs” into the country. In other words, the Asians are perceived as sanitizing the city, on the one hand, and contaminating it, on the other hand. Sanitation concerns thus legitimize the portrayal of both Asian humans and Asian non-humans as confusing the natural order of things.

mobilizations, which are perceived by some as a key factor in the construction of modern China: “The germ-warfare allegations combined two motifs that were central to the identity of New China: China as a victim of imperialism, and China as a victim of nature.” Ruth Rogaski, *Nature, Annihilation, and Modernity: China’s Korean Germ-Warfare Experience Reconsidered*, 61 J. ASIAN STUD. 381, 382 (2002).

146. Interview with Richard Ubbens, Toronto City Forester, in Toronto, Can. (May 27, 2005) (emphasis added).

147. Interview with Sophie Dessureault, Integrated Pest Mgmt. Coordinator, Vancouver Park Bd., in Vancouver, Can. (June 26, 2005).

148. *Id.*

149. *Id.*

IV. GOVERNING THROUGH TREE MANAGEMENT

A. Two Modalities of City Governance

“The central government . . . planted a row of trees across Northeast China, paralleling the Great Wall [to combat desertification].”¹⁵⁰

Tree management is not only a centralized effort executed by government officials. It is also, and perhaps even largely so, the result of an array of normalization techniques that build up toward an overall project of governance of the urban population. This article is concerned both with the explicit central management of trees by centralized government and with the less explicit disciplinary modes of tree culture in the city. According to many of the urban narratives voiced here, the tree is good and healthy, and thus a necessary component of the cityscape. At the same time, the tree is also a disciplinary method for governing the urban population. The interviews in this study describe two central governing modalities, or ways in which the urban population is governed, through the management of trees. Onysco, Vancouver’s tree inspector, suggests a first modality of tree governance:

[There are] lots of disputes between neighbors, but I stay out of them completely. A neighbor plants a tree to block the neighbors’ view just to fight each other. What I do in these cases is empathize. I nod my head in a sage and serious manner, and try not to smile at all [laughs]. It’s up to them to resolve it. It’s a private tree, but they try and drag me into it as a mediator They know it’s private but they call [me] anyway. I think they want somebody to fight their battles for them. I empathize [but] convince them that it’s between them. I don’t try to convince them to keep the trees, I have to stop somewhere.¹⁵¹

As discussed above, trees provoke or, at the very least, reveal human conflicts. When such conflicts arise between neighbors regarding private trees, the parties are left to fight the battle on their own terms. Tree officials remain silent in the face of the polarization that this battle produces and escalates. This silence is far from neutral. Moreover, it is an ideological statement: as long as the tree is in their backyard, rather than on a city street or park, the city official seems to be saying that residents are free to do whatever they please,

150. CRIENGLISH.com, Desertification, <http://english.cri.cn/3166/2006/06/05/60@98856.htm> (last visited Dec. 15, 2008).

151. Interview with Garry Onysco, *supra* note 84.

not only to the tree, but also to each other. This example is an illustration of the first modality of tree governance: non-intervention.

Bill Stephens, Vancouver’s Deputy Arborist Technician, describes the second modality of tree governance. In his words,

[Y]ou get conflict if you start balkanizing communities. So we don’t put the Chinese here and the Italians here and let them have it out, you know. They’re often living on the same street. They’re not hard lined neighborhoods [So] there are more conflicts I don’t know that I’ve ever had . . . people using sort of ethnic slurs against each other in relation to the trees [But] everybody’s really at each other, a really intense conflict between the two sides of the street, and so [the City Arborist] was the one intermediating that He didn’t cut down the trees . . . , [and] he didn’t make everybody happy, but there’s some peace anyways.¹⁵²

Apparently, when public trees are involved the city performs a different role in population management: mitigation is now the name of the game, and official intervention is depicted as essential, and even crucial, for the advancement of public order. Trees are valued, but so is the maintenance of public order. Paul Montpellier, Vancouver’s City Arborist, further describes this management approach:

With trees you have to maintain them for people to see them as an amenity, so that they see them as a good thing There is nothing that a tree can do that we don’t have some measures of trying to ensure that the tree . . . [doesn’t become] a pain in the ass. And trees can be a huge pain in the ass.¹⁵³

According to Montpellier, the city manages trees so as to maintain the ideas that laypersons have about trees being good.¹⁵⁴ Vancouver’s tree officials suggest a refined version of this preventative managerial approach, illustrated by Bill Stephens, Vancouver’s Deputy Arborist Technician:

We only became hip with this Feng Shui thing a few years ago Didn’t take us long to hear that one Chinese people put a house up, and [if] there’s a tree, you can bet that the door is not going to be aligned with that tree. Occasionally, they phone us up: they screwed up, maybe they were in Hong Kong and they paid the builder to put the house up and they get here and [now] . . . want us to cut the tree down [because it is in front of the door] [But] [t]hat’s going too far, right? . . .

. . . .

152. Interview with Bill Stephens, *supra* note 91.

153. Interview with Paul Montpellier, *supra* note 43.

154. *Id.*

... I've talked to some Feng Shui masters and they ask for your birthday. So ... what am I going [to do]—to knock on their door and ask them when their birthday is, and [then] that will determine, according to a little chart (you turn a little wheel and all these things) ... : 'you're a pig' so [the tree] should go there? ... [But] we won't plant the tree in front of their door, it will ruin their lot; [even] their lives, some would say.¹⁵⁵

Coherent with his egalitarian and preventative approach, Vancouver's City Arborist Paul Montpellier indeed reassured me that Vancouver does not plant trees in front of doorways. "[W]e do that all over the city [and] not only where these people reside,"¹⁵⁶ he emphasizes. Instead of the non-intervention model, the management approach to city governance utilizes flexible tree spacing techniques that support a multiplicity of landscapes, so that different people may feel at home in the city.

B. A Third Form of Governance: Trees as Proxy Policemen (or: The "Broken Trees" Theory)

In addition to the non-intervention and management modalities of governance, a third, much less explicit, modality of governance is also demonstrated through the interviews. This modality utilizes urban residents' sense of safety and security for an active management of public street space. Bill Stephens, Vancouver's Deputy Arborist Technician, elaborates on the relationship between aboveground trees and urban crime:

Downtown Eastside is a pretty bad neighborhood ... I've gone into the worst streets to plant trees ... Drug addicts would do anything, you know, people on cocaine or something—they'll just break [the tree], just for the stupidity of it. So we have to put big huge trees with no branches for about ten feet [high] ... [O]nce they get established they're safe.¹⁵⁷

In this narrative, street trees have become symbols of top-down governance and of official order. Accordingly, although Stephens underplays acts of vandalism as "just stupidity," one could also suggest interpreting these same acts as statements against centralized order.

Also addressing the interrelations between trees and crime, Boston's Urban Forester, MariClaire McCartan, explains why an urban park was selected for redevelopment in anticipation of Arbor

155. Interview with Bill Stephens, *supra* note 91.

156. Interview with Paul Montpellier, *supra* note 43.

157. Interview with Bill Stephens, *supra* note 91.

Day: “[T]here was a huge drug problem there So we cleaned it up and had a really good little [Arbor Day] ceremony.”¹⁵⁸ According to McCartan, the city civilizes urban spaces and “cleans them up” from crime by turning them into tree planting sites.¹⁵⁹

However, trees have not always been utilized as symbols of order and as crime fighters. For years, both academics and government officials have argued that trees and other forms of vegetation actually increase the sense of fear in urban settings. “Fear-maps” elicited from students, for example, were interpreted to suggest that fear is positively correlated with the *presence* of trees, shrubs, and walls—all concealing vision and limiting escape options.¹⁶⁰ Such studies suggest that changes in the character of campus outdoor spaces will decrease crime opportunities.¹⁶¹

Similarly, Boston’s Urban Forester, MariClaire McCartan, voices the instrumental perception of trees as technologies for a central management of public space, this time focusing on their effect on government officials. In her words, “[i]f you raise the canopy above the ground so you can see through, that makes the police happy cause [sic] they can see through, [and it] makes people feel safer [S]o [the] cops will feel better that they can see through, they don’t feel like anyone’s hiding.”¹⁶² Speaking from a law enforcer’s perspective, McCartan validates the role of trees as enhancing disorder: their trimming is necessary to ensure feelings of security in laypersons and policemen alike.

However, recent findings establish a *negative* correlation between trees, and vegetation in general, and the existence and level of fear of crime. Tree and grass maintenance are, according to these studies, perceived as increasing a sense of safety.¹⁶³ Indeed, “[r]esidents living in ‘greener’ surroundings report lower levels of fear, fewer incivilities, and less aggressive and violent behavior.”¹⁶⁴ For example, a study published in 2001 compares police crime reports

158. Interview with MariClaire McCartan, *supra* note 55.

159. *Id.*

160. Bonnie Fisher & Jack L. Nasar, *Fear Spots in Relation to Microlevel Physical Cues: Exploring the Overlooked*, 32 J. RES. IN CRIME & DELINQUENCY 214, 218–19 (1995).

161. Jack L. Nasar et al., *Proximate Physical Cues to Fear of Crime*, 26 LANDSCAPE & URB. PLAN. 161, 176 (1993).

162. Interview with MariClaire McCartan, *supra* note 55.

163. Frances E. Kuo et al., *Transforming Inner-City Landscapes: Trees, Sense of Safety, and Preference*, 30 ENV’T & BEHAV. 28, 55 (1998).

164. Frances E. Kuo & William C. Sullivan, *Environment and Crime in the Inner City: Does Vegetation Reduce Crime?*, 33 ENV’T & BEHAV. 343, 343 (2001).

for ninety-eight apartment buildings in Chicago's inner-city neighborhoods with varying levels of nearby vegetation.¹⁶⁵ The results indicate that "the greener a building's surroundings, the fewer the crimes that were reported."¹⁶⁶ Other studies also suggest that by supporting common space use and informal social contact among neighbors, trees increase the formation of "neighborhood social ties," thereby significantly increasing the urban residents' sense of safety.¹⁶⁷

Similarly, Sherri Brokopp, Director of the Community Forest Partnership at the Urban Ecology Institute in Boston, describes how a group of elderly women has shifted the level of crime on their street by planting vegetation in empty tree pits:

[This happened in a neighborhood where] there were a lot of drugs and there was a lot of prostitution. . . . Over the month every night the[se] [elderly] women would come out with their cans and . . . they would talk to each other and it looks nice, you know, kind of like [makes] the street more attractive. One night a prostitute was coming down the street who was kind of a regular there. And she said to the women: "Oh, you are the ones taking care of the flowers, we'll go somewhere else" [laughs]. . . . She respected their efforts, basically.¹⁶⁸

Brokopp believes that a "positive" use of the street—and trees and flowers are positive symbols in her narrative—may help to drive criminals and crime away.¹⁶⁹ This approach resonates with James Wilson's "Broken Windows" theory, which suggests that "if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken."¹⁷⁰ In the case of trees, their orderly use signals the neighborhood's respect for the law, while an "unnatural" use of space, and a broken tree in particular, signals the residents' lack of care and attention, thereby inviting more crime.

By focusing on the tree's physical capacity to impair vision, the first group of studies and experts sees the presence of trees in the city as increasing crime rates. These narratives focus on the nonliving "thingness" of the tree. On the other hand, together with Brokopp's

165. *Id.*

166. *Id.*

167. Frances E. Kuo et al., *Fertile Ground for Community: Inner-City Neighborhood Common Spaces*, 26 AM. J. COMMUNITY PSYCHOL. 823, 823 (1998); *see also* THE NEW POLICE SCIENCE: THE POLICE POWER IN DOMESTIC AND INTERNATIONAL GOVERNANCE (Marcus D. Dubber & Mariana Valverde eds., 2006); JACOBS, *supra* note 32.

168. Interview with Sherri Brokopp, *supra* note 53.

169. *Id.*

170. James Q. Wilson & George L. Kelling, *Broken Windows*, ATLANTIC MONTHLY, March 1982, at 29, 31.

narrative, more recent studies emphasize the tree’s organic and green component as instrumental for inducing positive community ties and feelings of openness. Moreover, while the first group of studies provides a rather simple modality of governance that sees things in their material manifestation (such as blocking escape or light), the more recent group of studies adds mental considerations to the physical, thereby highlighting the social dimensions of space. One way or another, both study groups and all the relevant interviews with city officials portray the urban landscape, in general, and trees, in particular, as elements that can and should be manipulated by a central administration for the explicit purpose of increasing a community’s sense of safety and security. Moreover, the management of trees not only enables, but also masks, the management of humans.

In effect, the governance of nature in the city, in general, and the management of public city street trees, in particular, are technologies for human governance. They are both aspects of a matrix of maneuvers orchestrated “to shape the beliefs and conduct of others in desired directions by acting upon . . . their environment.”¹⁷¹ Moreover, the design of public cityscapes as a green tranquilizer is especially oriented toward the governance of crime. Put differently, crime has become a “defining feature”¹⁷² in how various residents and officials relate to city trees, and the construction of city treescapes is increasingly governed through crime.¹⁷³

Another important aspect of the governance of humans through trees is that it relies on the work of individual city residents and nongovernmental groups as much as it relies on authoritative control mechanisms. The coalition responsible for counting and documenting city street trees in Boston, led by Sherri Brokopp, is but one of many examples of such governance-at-a-distance. By affecting street tree design, this type of crime prevention has become an everyday technology for self-monitoring by urban residents, a site for the new criminology of everyday life.¹⁷⁴

171. Rose & Miller, *supra* note 28, at 175; see generally Garland, *supra* note 5.

172. See Simon, *supra* note 5, at 1114 (noting that contemporary governments increasingly govern through crime, and that this form of governance means “making crime the defining feature of the subject’s relationship to power”).

173. See *supra* notes 163–67 and accompanying text.

174. See Garland, *supra* note 5, at 452 (discussing the emergence of new, more subtle, and indirect techniques for the control of crime through nongovernmental agencies and organizations, a mode of governing crime that the author calls a “responsibilization strategy” because it devolves responsibility for crime prevention onto these nongovernmental agencies).

V. CONCLUSION

This article has focused on the governance of humans through treescaping the public urban street space. It illustrated that what seemed at first an innocuous city project that corresponds with environmental discourses may also be understood as a technology of urban governance in general, and of governing through crime in particular. The article has identified three specific forms of governance: non-intervention, mediation, and governance through crime. Generally, it suggested that the construction of the city's public space transforms the narrative that perceives trees as universally good into a hegemonic assertion that "everyone loves trees," indirectly enforcing this assertion upon different parts of the urban population.

Yet a brief inquiry has indicated that trees are not always the object of everybody's love. Some want them down for development, some because they block their view of sunlight or skyline, and others for fear that the trees might one day break and damage their car or house, or for spiritual or sanitary reasons. Although posed as a natural occurrence, the mere presence of trees in the city, as well as their particular locations and types, is therefore a much more orchestrated enterprise than it may initially seem to be. Moreover, seemingly technical decisions such as whether to plant, maintain, or replace trees favor certain social groups over others. In this sense, not unlike the situation in pre-modern cities described at the outset,¹⁷⁵ trees are used as symbols of class, race, and status.

The notion of greening the city and the conviction that trees cannot be anything but good, healthy, and lovable is also a part of the recent war on crime. Concerned with human bodies as well as with real and imagined spaces, this war is carried out through a detailed design of public city streets. The placement and management of urban trees is thus intended to trigger certain human emotions, such as a sense of community and even of safety. Treescaping, the article has ultimately established, is yet another technology for governing urban populations and, moreover, one that utilizes the trees' natural properties to legitimize this form of governance.

Although Garland does not directly refer to trees or to the environment, I suggest that his analysis is applicable here.

175. *See supra* notes 34–42 and accompanying text.